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IN THE

Supreme Court of the United States

October Term, 1958.

No. 177.

HARRY J. ALKER, JR.,
Petitioner,

v.

ESTATE OF GEORGE W. RENTSCHLER, DECEASED,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

Petitioner's Reply Memorandum.

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PETITIONER'S REPLY MEMORANDUM.

Petitioner believes it necessary to file this Reply Brief.

(a) The opposition brief, on pages 4 and 5, assumes as established important facts or conclusions which we believe are not so established. It declares that petitioner was derelict, displayed implacable hostility to the beneficiary (his co-fiduciary), and his continuance in office might jeopardize the estate, all of which is incorrect and for which there is no foundation.

(b) The opposition brief repeats the charge of alleged derelictions on pages 8, 21 and 23, although there were no derelictions, as was clearly pointed out in paragraph D, page 10, of the Petition for Writ of Certiorari. Although the Court in the case at bar said there was much evidence

of dilatory, careless and questionable conduct on the part of the petitioner (R169), yet we believe the record fails to substantiate such a conclusion. In fact, the two officers of the corporate co-fiduciary, who were in the best position to judge his conduct, testified that petitioner was prompt and competent (R82); that the administration of the estate had been properly performed in every respect; and that there had been satisfactory cooperation in every way by the petitioner with the corporate co-fiduciary.

(c) The opposition brief repeats on pages 8 and 21 that the petitioner was hostile toward Miss Rentschler, his co-fiduciary. There is no evidence of this. The only charge she made was that petitioner confused her and that she therefore lost confidence in him, giving as a specific reason for her alleged confusion that she could not understand what prompted the Girard Trust Corn Exchange bank, which was named in the will as the corporate co-fiduciary, to renounce its right to qualify as a co-fiduciary.

(d) The opposition brief repeats on pages 6 and 8 the charge that the petitioner *concealed* from Miss Rentschler the fact that the Girard Trust Corn Exchange Bank had not qualified as co-executor. The renunciation of the Girard Trust Corn Exchange Bank was specifically alleged in her application jointly with petitioner for the letters testamentary filed with the Register of Wills. Furthermore, her own testimony and the record shows she signed many assignments, deeds, and instruments which recited the renunciation. Miss Rentschler joined with petitioner in all administrative procedures as co-executor without the joinder of any corporate co-fiduciary. These facts show she knew the Trust Company renounced, but that she was concerned or confused because she could not understand why the Trust Company renounced. Obviously, if the reason was of such great importance to her, she might have asked the Girard Trust Corn Exchange Bank itself, either by mail or by per-

sonal conference. Furthermore, the petitioner testified that, when he found the Girard definitely would not act, he repeatedly asked Miss Rentschler to agree on the appointment of a substituted fiduciary, presenting to her petitions for her joinder, mentioning from time to time three different corporate fiduciaries, including the one that was finally appointed (R88-89), but that she refused to sign, saying she would have none but the Girard Trust Corn Exchange Bank.

(e) The opposition brief, on pages 8, 13 and 20, repeats the charge that the continuance of the petitioner as fiduciary might jeopardize the estate. This charge is the main basis or ground stated in the opinion of the Orphans' Court *en banc* (R180). With all of the assets or property of an estate in the physical custody of the corporate fiduciary there is no possibility of any co-fiduciary such as the petitioner doing anything which could jeopardize the estate. *Crawford's Estate*, 340 Pa. 187, 191; 16 A. 2d 521. It is universal and fundamental that in a trust all the trustees must jointly act and participate in all transactions. The cases cited by the respondent have no application here because for the most part they are all cases in which there were one or two individual fiduciaries (and no *corporate* fiduciary), cases in which one of the trustees had conflicting interests with some material interest of the estate or cases in which the relation between the two trustees had become so *hostile* that there could be no proper cooperation. *No such conditions existed here.* In addition, the corporate fiduciary testified there was complete cooperation between it and petitioner and that they had complete confidence in one another. The various pleasant letters of Miss Rentschler to the petitioner clearly show friendly cooperation between them.

(f) Petitioner's argument is that his constitutional rights under the Fourteenth Amendment have been violated because the Orphans' Court decreed his removal without

proper or legal grounds as a fiduciary appointed by the decedent. The trial Judge based his decree on incompetent, inadmissible and ex parte matters, all of which have been completely treated on pages 6 to 11 of the Petition for the Writ of Certiorari.

(g) Contrary to respondent's averment, the question of due process was presented in the Court below (Petition for Writ, pages 14-16).

Respectfully submitted,

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September 29, 1958.